

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

2008 NOV 21 AM 9:52

M. Sanders

HARRY LEE TELFAIR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NOS. CV407-187
CR404-118

O R D E R

After a careful de novo review of the record in this case, the Court concurs with the Magistrate Judge's Report and Recommendation (CV407-187 Doc. 20), to which Objections have been filed (Id. Doc. 22). The Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of the Court. Accordingly, the Amended Judgment (CR404-118 Doc. 43) in Petitioner's criminal case is **VACATED** and the Clerk of Court is **DIRECTED** to enter a new judgment imposing the same sentence on the date of this Order. As it is clear Petitioner wishes to appeal, the **Clerk of Court is DIRECTED** to file a notice of appeal on Petitioner's behalf. Since Petitioner is entitled to the assistance of counsel on appeal, the attorney who represented Petitioner during the § 2255 evidentiary

hearing, Grant B. Smith, shall CONTINUE TO REPRESENT Petitioner on appeal.

In the Objections, Petitioner appears to be objecting to the Magistrate Judge's failure to hold an evidentiary hearing or rule on Petitioner's two remaining ineffective assistance of counsel claims. (Doc. 22 at 2.) Petitioner argued that his counsel at sentencing was ineffective because she failed to introduce mitigating evidence and failed to object on the record to the Court's upward departure from the guideline sentence. In addition, Petitioner objected to the Magistrate Judge's failure to rule on Petitioner's argument that the sentence imposed was improper because the Court failed to provide Petitioner notice of its intention to depart upward from the guideline sentence. (Id.) Having been granted an out-of-time appeal, Petitioner may now raise these claims before the Eleventh Circuit Court of Appeals. Therefore, it is inappropriate for this Court to consider them at this time.

SO ORDERED this 21st day of November, 2008.



WILLIAM T. MOORE, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA